

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC. #. _____
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SHAW FAMILY ARCHIVES, LTD.,
et al.,

Plaintiffs,

05 Civ. 3939(CM)

-against-

CMG WORLDWIDE, INC., et al.,

Defendants.

MEMORANDUM ORDER STAYING ACTION

McMahon, J.:

Before the Court is a motion to dismiss, stay or transfer this action, involving intellectual property rights in certain images of the deceased movie star Marilyn Monroe, to the Southern District of Indiana. Defendants claim to have filed a prior action in that district that is identical or substantially similar to the instant action. Plaintiffs claim that the "first-filed" rule, which defendants invoke to obtain dismissal or stay of this action, does not apply here, because they are not subject to jurisdiction in the Southern District of Indiana. (They also claim that the Indiana action was not really the first-filed action; that it is not identical or substantially similar to this action; and that this is a case where the first-filed rule ought not apply, given the relative means of the parties and defendants' alleged forum shopping, but all of those arguments are irrelevant at the moment).

Plaintiffs advise the Court that they have made a motion to dismiss the Indiana action for lack of personal jurisdiction.

This Court stays prosecution of this action pending a determination of the motion to dismiss for lack of personal jurisdiction in Indiana. The plaintiffs are required to notify this Court by letter within five days following receipt of a decision on that motion, and to transmit a copy of the decision to this Court. At that time, the Court will advise defendants when to file their reply papers on the instant motion.

Dated: July 6, 2005



U.S.D.J.

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